IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

OP.No. 18389 of 2002(L)

PETITIONER:

GEORGE,PULIKKAKUNNEL HOUSE,NEDIYASALA
KARA,MANAKKADU VILLAGE,THODUPUZHA TALUK.

BY ADV. SRI.DINESH R.SHENOY
SRI.P.S.SIDHARTHAN

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,COLLECTORATE,
IDUKKI

2. SHRI.P.P.ELDOSE,PALAKKADAN HOUSE,CHURULI
KARA,IDUKKI-KANJIKUZHI VILLAGE,THODUPUZHA TALUK.

3. DEEPA JOSEPH,PARACKAL HOUSE,
CHELACHUVADU KARA,IDUKKI-KANJIKUZHI VILLAGE,
THODUPUZHA TALUK

4. GEORGE A.T.,EMBARAYIL HOUSE,
IDUKKI-KANJIKUZHI VILLAGE,KANJIKUZHI P.O.,
THODUPUZHA TALUK

5. K.K.AUGUSTINE,KODIYANKUNNEL,NELLAPPARA
KARA,KARIKUNNAM VILLAGE,IDUKKI DISTRICT

*6. SALES TAX OFFICER, THODUPUZHA.
(*IMPLEADED AS ADDITIONAL 6TH RESPONDENT AS PER ORDER DATED 04/07/2002 IN O.P.No. 18389/2002.)

BY ADV. SRI.S.VIDYASAGAR
SRI.S.VIDYASAGAR
GOVERNMENT PLEADER – ADV. SHRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 18389/2002

ORDER ON CMP NO. 31359/2002 IN O.P.No. 18389/2002

DISMISSED.

16/03/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

ORDER ON I.A.No 4420/2004 IN O.P.No. 18389/2002

DISMISSED.

16/03/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF SALE DEED NO. 2292/97.

EXT.P2 COPY OF AGREEMENT DATED 20/8/90.

EXT.P3 COPY OF FINAL ORDER PASSED IN CA NOS. 21 AND 22/1998.

EXT.P4 COPY OF ASSESSMENT DATED 26/9/98.

EXT.P5 COPY OF ASSESSMENT ORDER DATED 26/9/98.

EXT.P6 COPY OF THE REPRESENTATION DATED 09/11/98 FILED BEFORE THE 1ST RESPONDENT.

EXT.P7 COPY OF NOTICE NO.B4-25562/96 DATED 28/3/2001.

EXT.P8 COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR, IDUKKI DATED 30/01/2002.

RESPONDENT'S EXHIBITS

EXT.R1(a) COPY OF THE LETTER NO. 22110993/93-94 DATED 28/1/99 OF SALES TAX OFFICER, THODUPUZHA ADDRESSED TO THE DISTRICT COLLECTOR, IDUKKI.

EXT.R4(a) COPY OF THE SALE DEED EXECUTED IN FAVOUR OF THE 3RD RESPONDENT BY THE 2ND RESPONDENT DATED 09/07/2001.

EXT.R4(b) COPY OF THE STAGE CERTIFICATE ISSUED BY THE ENGINEER, DATED 30/07/2002.

EXT.R4(c) COPY OF THE RECEIPT DATED 18/7/2001 SHOWING REMITTANCE OF FEE FOR EFFECTING TRANSFER OF REGISTRY.

EXT.R4(d) COPY OF THE RECEIPT FOR PAYMENT OF BASIC TAX FOR 40 CENTS OF LAND IN SY. NO. 314/3/1 PAID BY THE 2ND RESPONDENT DATED 07/4/2001.

EXT.R4(e) COPY OF THE RECEIPT ISSUED BY THE VILLAGE OFFICER, KANJIKUZHY VILLAGE, DATED 01/08/2002.

EXT.R4(f) COPY OF THE ORDER IN 298/98 IN O.S.No. 72/98 OF THE MUNSIFF'S COURT, IDUKKI DATED 11/9/98.

EXT.R4(g) COPY OF THE DECREE DATED 2ND DAY OF NOVEMBER 2000 IN O.S.No. 72/98 PASSED BY THE MUNSIFF'S COURT, IDUKKI.

EXT.R4(h) COPY OF THE JUDGMENT IN O.S.No. 21/98 DATED 17/11/2000 PASSED BY THE MUNSIFF'S COURT, IDUKKI.

EXT.R4(i) COPY OF THE ORDER OF CONFIRMATION OF SALE IN RESPECT OF 40 CENTS OF LAND IN THE NAME OF 2ND RESPONDENT DATED 28/3/1998.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 18389 of 2002 L

Dated, this the 16th day of March, 2007

J U D G M E N T

Petitioner is challenging sale in auction of property purchased by him from 5th respondent to the 2nd respondent who in turn sold the property to 3rd respondent. Petitioner is a relative of the defaulter, namely 5th respondent. The defaulter sold the property to the petitioner in the year 1997, which is stated to be based on a sale agreement executed 7 years prior to the sale. Petitioner's case is that the disputed demand against defaulter was cancelled in appeal and as of now no arrears are payable by the defaulter. The learned Government Pleader also has confirmed this position. However, defaulter has not chosen to challenge the recovery proceedings in time, which led to sale of property to 2nd respondent, who in turn sold property to 3rd respondent. Even though the learned counsel for the petitioner contended that petitioner, being the purchaser of property from the defaulter, should get the property because defaulter has ceased to be liable for payment of any tax, I do not think petitioner is entitled relief for more than one reason. In the first place petitioner is only a relative of the

defaulter and sale by defaulter to the petitioner is stated to be under an agreement executed 7 years back to the date of sale, which itself does not appear to be a genuine sale at all. Secondly, the sale through auction conducted on 23/01/1998 was confirmed on 28/03/1998. The purchaser later sold the property to 3rd respondent. The petitioner / defaulter was deprived of ownership and possession of property 9 years back, reversal of which position will cause extreme loss and hardship to the purchasers. Therefore, even on equitable grounds sale and confirmation of sale happened 9 years back cannot be interfered with. However, since defaulter has ceased to be liable for tax, the amount paid by the petitioner for the property should be paid to the petitioner by the 1st respondent from out of sale proceeds recovered. First respondent is directed to release payment for the amount covered by the purchase deed in favour of the petitioner and the balance amount to the 5th respondent as the learned Government Pleader reported that there is no liability to be settled. This OP is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg